

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DOUGLAS L. NOBLE,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. DISM-00-0009

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on October 17 and 18, 2000, in the Personnel Appeals Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Douglas Noble was present and represented himself *pro se*. Lawrence W. Paulson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant deviated from standard testing procedures, used inappropriate language, and failed to follow his supervisor's directive.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Droege v. Dep't

1 of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by Board (1988); Miller  
2 v. Dep't of Social & Health Services, PAB No. D85-25 (Hanbey, Hrg. Exam.)(1985); Countryman  
3 v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the  
4 Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-  
5 053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

## 6 7 **II. FINDINGS OF FACT**

8 2.1 Appellant Douglas L. Noble was a Classification Counselor 3 and permanent employee of  
9 Respondent Department of Corrections (DOC) at the Washington Corrections Center (WCC).  
10 Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated  
11 thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on February 4, 2000.

12 2.2 By letter dated February 3, 2000, James Blodgett, Superintendent of WCC, notified  
13 Appellant of his dismissal. Mr. Blodgett alleged that Appellant neglected his duty, was inefficient  
14 and insubordinate, committed gross misconduct and willfully violated published agency rules or  
15 regulations when (1) he deviated from WCC inmate testing procedures by interviewing inmates in  
16 their unit rather than in the testing center, (2) used inappropriate language with a co-worker when  
17 he told her, "You can run the fucking thing by yourself tomorrow," and (3) failed to follow his  
18 supervisor's directive to return his annual performance evaluation.

19 2.3 Appellant's employment history includes a September 1, 1998 letter of reprimand for acting  
20 contrary to management directives and creating a security risk for the institution and a May 28,  
21 1999 letter of reprimand for the use of profanity and unprofessional conduct. In addition, in June  
22 1999, Appellant was given a three-day suspension for acting contrary to verbal and written  
23 directives and creating a security risk for the institution and in December 1999, he was given a  
24 three-month reduction in salary for walking out of a corrective interview with his supervisor after  
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1 his supervisor directed him to stay. Appellant's performance evaluations from July 1997 through  
2 July 1999 show a continuing pattern of deteriorating work performance.

3 ***Incident 1***

4 2.4 Appellant was responsible for administering various tests to incoming inmates prior to the  
5 inmates being classified and transported to the correctional institutions. WCC has written testing  
6 procedures that Appellant was required to follow when administering tests. As part of the pre-  
7 testing process, each inmate is interviewed. Appellant was aware of the WCC practice and  
8 procedures for testing inmates.

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10 2.5 According to WCC practice, pre-testing interviews are conducted when the inmate reports to  
11 the testing center. The WCC Testing/Administration Process section of the Testing Desk Manual  
12 states, in part, "[a]s they arrive each inmate is 'checked in' using the Call-Out List on clipboard."  
13 In addition, the Field Instruction for the Reception Center Inmate Testing process, WCC 310.500,  
14 indicates that the inmates are called-out of their units to report to the testing center when it states  
15 that the testing counselor prepares a call-out list.

16 2.6 On August 24 and 25 1999, Appellant went to the reception center unit to conduct pre-  
17 testing interviews with inmates. Appellant did not have permission to deviate from the standard  
18 practice of interviewing inmates in the testing center.

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20 2.7 On August 25, 1999, Appellant interviewed inmate JH in the reception center unit and then  
21 documented in inmate JH's Offender Based Tracking System (OBTS) form that he had reported for  
22 testing. However, although inmate JH was scheduled for testing, he was called out for medical  
23 reasons and did not report to the testing center. Correctional staff believed that inmate JH was at  
24 the testing center when he was actually in the infirmary.

1 2.8 On August 25, 1999, Jacqueline Dick, Appellant's co-worker, reported to Samuel Cannon,  
2 Appellant's supervisor, that Appellant had deviated from the WCC testing procedures. On August  
3 27, 1999, Mr. Cannon initiated an Employee Conduct Report (ECR) against Appellant.

4 ***Incident 2***

5 2.9 On August 24, 1999, Ms. Dick asked Appellant why he was not conducting the pre-testing  
6 interviews in the testing center. He told her that he was trying something new. Ms. Dick was  
7 concerned about inmate accountability in the testing center. She was also concerned about  
8 inappropriate behavior of the inmates in the testing center. She attempted to discuss her concerns  
9 with Appellant but he was not receptive and she believed that he became angry. The next day, she  
10 reported the events and Appellant's behavior towards her to Samuel Cannon.

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12 2.10 Ms. Dick reported that Appellant told her, "You can run the whole fucking thing by yourself  
13 tomorrow." We do not find Ms. Dick's testimony about this statement credible. The credible  
14 testimony establishes that Appellant had only once before been heard using inappropriate language  
15 with staff, while Ms. Dick was frequently heard using inappropriate language with staff.

16 2.11 On August 27, 1999, Mr. Cannon initiated an ECR against Appellant for using inappropriate  
17 language.

18  
19 ***Incident 3***

20 2.12 On August 20, 1999, Mr. Cannon reviewed Appellant's personnel file. He discovered that  
21 Appellant's performance evaluation for the period of July 6, 1997 thorough July 6, 1998 was not in  
22 the file. When the evaluation was completed in December 1998, Appellant asked if he could take  
23 the evaluation home and return it with his comments. Mr. Cannon told him to return it to the  
24 personnel office. Mr. Cannon did not follow up to ensure that Appellant had turned in the form as  
25 directed.

1 2.13 WCC policy allows an employee seven days to complete, sign and return the evaluation.  
2 WCC policy provides that “supervisors are responsible for the timely completion of performance  
3 evaluations for the employees they supervise.” During this time period, WCC used State of  
4 Washington Employee Performance Evaluation form S.F. 9128. The instructions included with the  
5 form state that “[t]he supervisor is responsible to obtain signatures of the employee and the  
6 evaluating supervisor’s supervisor and is also responsible for seeing to it that the employee receives  
7 a copy of the final evaluation and that a copy is placed in the employee’s official personnel record.”

8 2.14 After Mr. Cannon discovered that the evaluation was not in Appellant’s file, he talked to  
9 staff in the personnel office. They informed him that they had never received Appellant’s  
10 evaluation. Appellant credibly testified that he thought that he had returned the original to the  
11 personnel office shortly after it was provided to him in December 1998.  
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13 2.15 On August 23, 1999, Mr. Cannon directed Appellant to return the original evaluation to him  
14 the next day. Appellant provided Mr. Cannon with a copy of the evaluation. Appellant’s signature  
15 was not on the copy he provided to Mr. Cannon.  
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17 2.16 On August 27, 1999, Mr. Cannon initiated an ECR against Appellant because he failed to  
18 return the original performance evaluation as directed.

19 2.17 DeLoss Zachry, Reception Center Lieutenant, investigated each of the three ECRs. He  
20 forwarded the results of his investigations to James Blodgett. Mr. Blodgett met with Appellant,  
21 reviewed the ECRs and determined that misconduct occurred.  
22

23 2.18 Regrading the first incident, Mr. Blodgett determined that it was unnecessary for Appellant  
24 to interview inmates in the reception center unit, that he deviated from procedures without  
25 authorization to do so, that his actions disrupted the unit, and that as a result, one inmate was  
26 unaccounted for. Mr. Blodgett concluded that Appellant neglected his duty and was insubordinate

1 when he failed to follow written procedures and directives and was inefficient and committed gross  
2 misconduct when he disrupted the custody staff as well as inmate programming and the efficiency  
3 of the testing process.

4 2.19 Regarding the second incident, Mr. Blodgett determined that Appellant failed to treat Ms.  
5 Dick with dignity and respect, neglected his duty, and failed to abide by agency policy. Mr.  
6 Blodgett concluded that Appellant's communication was demeaning and rose to the level of gross  
7 misconduct because it was counterproductive to teambuilding and the cooperation necessary  
8 between coworkers.

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10 2.20 Regarding the third incident, Mr. Blodgett determined that Appellant neglected his duty and  
11 was insubordinate when he failed to follow the instructions given to him by his supervisor.

12  
13 2.21 Mr. Blodgett found that Appellant's behavior in these incidents was similar to prior  
14 incidents for which Appellant was given corrective or disciplinary actions. Mr. Blodgett  
15 determined that prior attempts to correct Appellant's behavior were unsuccessful, that Appellant  
16 refused to accept responsibility for his actions, did not attempt to change his behavior, and was  
17 unmanageable and unpredictable. Mr. Blodgett concluded that he could not trust Appellant to  
18 follow policies, which posed a security risk for the institution, and that dismissal was warranted.

### 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that Appellant admittedly deviated from procedures. Respondent  
21 contends that as a result, Appellant adversely impacted the institution's ability to be accountable for  
22 inmates, disrupted the daily routine on the unit, and violated the directives he had been given by his  
23 supervisors to follow procedures. Respondent asserts that Ms. Dick had no motive to lie, that she  
24 was not offended by Appellant's language and that she truthfully reported what Appellant had said.  
25 Respondent contends that Appellant's use of profanity towards Ms. Dick was inappropriate, was a  
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1 violation of agency policies and expectations, and was repeated behavior. Respondent asserts that  
2 during the performance evaluation ECR investigation, Appellant gave conflicting versions of what  
3 happened which demonstrates his lack of credibility and veracity and that his refusal to return the  
4 evaluation was yet another example of his willful defiance of his supervisor's directive.  
5 Respondent contends that dismissal is appropriate given Appellant's long history of similar  
6 misconduct and failure to respond to the agency's numerous attempts to correct his behavior.

7  
8 3.2 Appellant admits that he interviewed inmates in the reception center unit but argues that it  
9 was not his intent to cause problems or disrupt the unit. Appellant contends that he had been  
10 working alone and assumed that on the dates that he went to the unit, he would be working alone  
11 and he thought that interviewing inmates in the unit would improve the testing process. Appellant  
12 denies using profanity towards Ms. Dick. Appellant contends that she has a history of  
13 untruthfulness and that she should not be believed in this instance. Appellant argues that he  
14 attempted to comply with his supervisor's directive, that he searched for the original performance  
15 evaluation, and that all he had was an unsigned copy of the evaluation. Appellant contends that the  
16 evaluation was conducted in December 1998 and by the time his supervisor asked him about it in  
17 August of 1999, he no longer remembered what he had done with the original. Appellant  
18 acknowledges that he has received corrective actions in the past, but he contends that he has taken  
19 steps to correct his behavior. Appellant asserts that he suffers from depression and high blood  
20 pressure, that he is undergoing treatment for his conditions and that he should be given an  
21 opportunity to show that he can successfully perform his duties as a classification counselor.

#### 22 IV. CONCLUSIONS OF LAW

23 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
24 herein.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
2 the charges upon which the action was initiated by proving by a preponderance of the credible  
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
5 Corrections, PAB No. D82-084 (1983).

6 4.3 Appellant raises his medical conditions as a defense. Appellant did not request  
7 accommodation and no evidence exists that he was disabled. Furthermore, no evidence exists to  
8 support Appellant's claim that his medical conditions contributed to his behavior.

9  
10 4.4 Neglect of duty is established when it is shown that an employee has a duty to his or her  
11 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
12 of Social & Health Services, PAB No. D86-119 (1987).

13 4.5 Inefficiency is a failure to produce the desired effect with the minimum of energy and time.  
14 Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by  
15 Board (1988). It is the ineffective use of time and resources. Miller v. Dep't of Social & Health  
16 Services, PAB No. D85-25 (Hanbey, Hrg. Exam.)(1985).

17  
18 4.6 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
19 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.  
20 Dep't of Social and Health Services, PAB No. D94-025 (1995).

21  
22 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
23 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

24 4.8 Willful violation of published employing agency or institution or Personnel Resources  
25 Board rules or regulations is established by facts showing the existence and publication of the rules  
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1 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
2 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &  
3 Health Services, PAB No. D93-053 (1994).

4 4.9 Respondent has met its burden of proving that Appellant deviated from standard testing  
5 procedures without authorization. Furthermore, Appellant admits that his actions were wrong.  
6 Respondent has shown that Appellant's actions constituted a neglect of duty, insubordination,  
7 inefficiency, gross misconduct and willful violation of WCC policies. Appellant was aware of his  
8 responsibility to follow WCC procedures, he had been directed to follow procedures, was given  
9 specific performance expectations, and had a history of corrective and disciplinary actions for  
10 similar behavior. Therefore, a severe disciplinary sanction is appropriate.

11  
12 4.10 Respondent has failed to prove that Appellant used profanity during his conversation with  
13 Ms. Dick.

14  
15 4.11 Respondent has established that in August 1999, Appellant failed to return the signed  
16 original performance evaluation as directed by his supervisor. However, under the unique  
17 circumstances of this case, including Mr. Cannon's failure to follow-up on the evaluation in  
18 December 1998, Respondent has failed to prove that Appellant's actions constituted misconduct.

19 4.12 In determining whether a sanction imposed is appropriate, consideration must be given to  
20 the facts and circumstances including the seriousness and circumstances of the offense. The penalty  
21 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent  
22 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.  
23 An action does not necessarily fail if one charge is not sustained unless the entire action depends on  
24 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

1 4.13 Under the totality of the proven facts and circumstances in this case, Respondent has proven  
2 that a severe disciplinary sanction is appropriate, however, the sanction of dismissal is too severe.  
3 Appellant should be reinstated to a position in which he exercises less independence and in which  
4 his day-to-day performance can be observed and appropriate supervision and guidance can be  
5 provided to him. Therefore, we conclude that the disciplinary sanction should be modified to a  
6 suspension followed by demotion to the position of Correctional Officer 2. In this position,  
7 Appellant will be provided the oversight necessary for him to effectively carry out the duties and  
8 responsibilities of his position and to allow him to regain the trust of the WCC administration. The  
9 appeal should be granted in part and the disciplinary sanction should be modified.

10  
11 **V. ORDER**

12 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Douglas Noble is granted in  
13 part and the disciplinary sanction of dismissal is modified to a six-month suspension without pay  
14 effective February 18, 2000, followed by a demotion to the position of Correctional Officer 2.

15 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

16 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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